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Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

DOCKET NO. 970575-CA

DANIEL J. PHELPS, Appellee and Cross Appellant, vs. JEAN SMITH SANDERS TRUST, Appellant and Cross Appellee.	Case No. 970575-CA

REPLY BRIEF OF APPELLEE AND CROSS APPELLANT

Appeal from a Judgment of the
Second District Court of Davis County

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REPLY BRIEF OF APPELLEE AND CROSS APPELLANT

ARGUMENT

Appellant argues that the Real Estate Purchase Contract executed by the parties (the "Contract") is not a valid, enforceable contract. There is no dispute between the parties that the initial offer expired by its own terms on June 23, 1995, or that when the defendant signed the document on June 26, 1995, it became a counteroffer. The parties disagree as to whether the Contract was appropriately accepted by the plaintiff. Appellant claims that the lower court erroneously found that the plaintiff accepted the counteroffer by initialing and dating the Contract. Furthermore, Appellant argues that the award of attorneys fees is discretionary by the trial court, and there was no abuse of discretion in this case.

I.

THE LOWER COURT WAS CORRECT IN RULING THAT THE PARTIES FORMED AN ENFORCEABLE CONTRACT FOR THE SALE OF REAL PROPERTY

Appellant argues that the plaintiff failed to properly accept the counteroffer, because the plaintiff's initialing and dating the Contract were inadequate to meet the signature requirement imposed by the Contract. Appellant claims that "The two previous signatures of plaintiff on June 22 and defendants on June 26 define the usage of 'sign'." (Brief of Appellant, p. 16) Appellant argues that the plaintiff could only have legally signed the Contract by writing out his complete name, not just acknowledging consent via his initials. This argument is unsupported.

A party's initials are adequate to sign a Contract. "Signing a contract by initials is just as effective to bind a party thereto as a full signature." 17A Am.Jur.2d, Contracts §188. Plaintiff applied his initials to the Contract after it was signed by the defendant. The plaintiff clearly indicated his intention to be bound to the terms of the Contract by this act. At the time the Contract was signed, there was no expression of question or concern by the parties about the validity and legally binding effect of the Contract. The court was correct in finding that the plaintiff's acceptance was valid.

Appellant argues that the plaintiff did not properly accept the counteroffer because the plaintiff did not sign the Contract in the proper place. Appellant never clearly delineates what it believes was the correct place for the plaintiff to sign. Regardless, Appellant's argument is not well taken. "[A] signature located anywhere on a contract is sufficient to authenticate the instrument if it was placed there with the intent to do so." PIO v. John B. Gilliland Const., 560 P.2d 247, 250 (Or. 1976) citing 1 Corbin on Contracts (1963) 122, §31; 17 C.J.S. Contracts §62b, pp. 736-737; 17

Am.Jur.2d 410-411, Contracts §72. The plaintiff initialed and dated the Contract with the intent to enter into a binding contract. The plaintiff had previously signed the Contract in the space labeled "Buyer's Signature" when submitting the initial offer. The plaintiff later accepted Defendant's counteroffer by initialing and dating the bottom of each page of the Contract. The plaintiff's initials formed a sufficient signature to accept defendant's counteroffer.

In its Brief, Appellant admits that it "has been unable to find any law or authority to support the lower court's assumption that these initials have any legal effect as to the substance of the offer or acceptance contained in the agreement itself." (Appellant's Brief, p. 15) On the other hand, Appellant fails to include any support for its claim that the spaces on the Contract for the parties to initial and date can have no legal effect other than for purposes of identification. This omission leads to the conclusion that Appellant has been unsuccessful in finding any authority for this proposition, as has Appellee.

Appellant claims that: "The conclusion of the lower court if followed in real estate transactions would produce a completely chaotic situation." (Appellant's Brief p. 15.) This claim is unfounded and misstates the evidence in this case. In the case at hand, the plaintiff, as buyer, prepared and signed a standard Real Estate Purchase Contract. This Contract expired by its own terms prior to acceptance by the Defendant, who was the seller. The Defendant signed the Contract, manifesting her assent to the terms contained therein and creating a counteroffer. The plaintiff then initialed and dated the Contract, manifesting his acceptance of the counteroffer. Neither party questioned the validity or legality of the Contract at the time it was executed. Furthermore, at the time the Contract was executed, the party trying to avoid the Contract understood she was entering into a contract and also assumed that the other party to the Contract understood that he had

purchased the property through the Contract. Based on these facts, the lower court ruled that the parties' understanding, and the contract they entered into, should be enforced.

Enforcing the contract as it was understood by the parties will not cause chaotic situations. To the contrary, chaotic situations will be created if hyper technical excuses, such as those advocated by the Appellant, can be used to nullify contracts.

II

APPELLEE WAS ENTITLED TO ATTORNEYS FEES AS A MATTER OF RIGHT.

In its reply brief, Appellant argues that the issue of attorneys fees is discretionary and should be left with the lower court. Paragraph 17 of the Contract specifies that: "In any action arising out of this Contract, the prevailing party shall be entitled to costs and reasonable attorneys fees." When a written contract contains a provision for payment of attorneys fees, courts should enforce that provision. Cobabe v. Crawford, 780 P.2d 834, 836 (Utah App. 1989). Furthermore, when attorneys fees are awarded as allowed by law, they are awarded as a matter of legal right. Cabrera v. Cottrell, 694 P.2d 622, 625 (Utah 1985).

In the case at hand, the lower court did not provide any reasoning or rationale for its decision not to award attorneys fees to the plaintiff, even though the plaintiff clearly prevailed when the court granted his motion for summary judgment. The contract between the parties provided for attorneys fees to the prevailing party. The plaintiff has a legal right to the reimbursement of his attorney fees.

By failing to award plaintiff his attorneys fees, the lower court abused its discretion. The lower court has discretion in calculating the proper amount of attorney fees in a particular case. Dixie State Bank v. Bracken, 764 P.2d 985, 988 (Utah 1988). However, the court abuses its discretion if

it fails to award attorneys fees to a party who is entitled to them as a matter of legal right without providing any reasoning for its decision. Furthermore, if the trial court's discretion includes the right to summarily dismiss a claim for attorney fees, the rule that attorneys fees are awarded as a matter of law is illusory.

CONCLUSION

The lower court correctly found that the parties entered into a valid, enforceable contract, and this finding should be upheld. The lower court's decision not to award attorneys fees to the prevailing party is contrary to the provisions of the contract and the law. The court should reverse this part of the lower court's decision, and award Appellee attorney fees for the underlying action and this appeal.

Respectfully submitted this 30th day of November, 1998.

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CERTIFICATE OF MAILING

I do hereby certify that I caused to be mailed a true and correct copy of the foregoing Reply Brief of Appellee and Cross Appellant to the following, postage prepaid, this 30th day of November, 1998:

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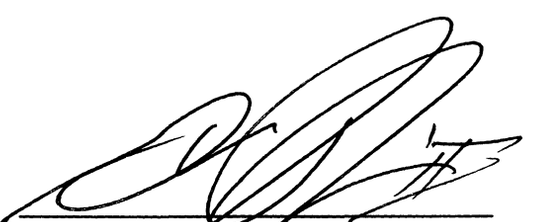

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